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Committee on the Elimination of Racial Discrimination
Eighty-ninth session

Summary record of the 2436th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 4 May 2016, at 3 p.m.

Chair: Ms. Crickley

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined thirteenth to fifteenth periodic reports of Namibia (CERD/C/NAM/13-15 and CERD/C/NAM/Q/13-15)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Ms. Shapwa** (Namibia), introducing the combined thirteenth to fifteenth periodic reports of Namibia (CERD/C/NAM/13-15), said that the Convention provided guidelines on ways of confronting behaviour that challenged the inherent equality of all human beings. Her country nevertheless shared the view of many States that an enhanced international framework was needed if the changing dynamics of racial discrimination were to be adequately addressed.

3. Namibia had established an enviable track record of peace, stability and racial harmony. The Constitution prohibited discrimination on grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status, and remained the bedrock for peaceful coexistence after centuries of racism and apartheid. Her country was still struggling to overcome the effects of the divisions that had been created, but a recent survey had shown that Namibia was the most tolerant society in Africa. Many challenges remained in empowering previously disadvantaged persons, however, and affirmative action measures had been put in place.

4. The Government had established two new offices in the Presidency, one dealing with marginalized communities and the other for persons with disabilities. Each was headed by a member of the group in question at the level of deputy minister. The Ministry of Health and Social Services had issued a directive to provide guidance on the provision of family planning services, including sterilization. Sterilization was done only with written consent, which included acknowledgement that counselling had been received and took the form of an affidavit signed at a police station.

5. The budget and staffing provisions for the Office of the Ombudsman had been increased to enable it to investigate human rights abuses and carry out awareness programmes, including human rights education. The Office had facilitated the drafting of the National Human Rights Action Plan adopted by the Government in December 2014, which addressed seven thematic areas including access to land and the right to non-discrimination. In its capacity as national human rights institution, the Office had received A status accreditation on three consecutive occasions from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Government was considering legislative amendments to address the issues raised by the Committee regarding the Ombudsman's independence.

6. A new Ministry of Poverty Eradication and Social Welfare had been established to coordinate all poverty eradication programmes. In acknowledgement of the impact of unemployment on poverty levels, the Wage Order for Domestic Workers Regulations under the Labour Act of 2007, setting a minimum wage and minimum conditions for domestic workers, had entered into force in December 2014. The Child Care and Protection Act had been adopted in 2015 and free universal primary education and secondary education had been introduced.

7. Namibia ranked third among African countries in terms of the number of women in Parliament, and twelfth in the world. Women comprised 45 per cent of the total number of employees across all sectors. The Traditional Authorities Act required traditional

authorities to promote women to positions of leadership. The 2010-2020 National Gender Policy provided guidelines and mechanisms to ensure gender equality and women's empowerment. The Government had improved the support services for survivors of gender-based violence.

8. All government buildings were required to be physically accessible to persons with disabilities. A policy framework was in place for the local integration of refugees and the Ministry of Home Affairs and Immigration had been directed to integrate some Angolan refugees into Namibian society.

9. **Mr. Avtonomov** (Country Rapporteur) said that the diversity of people in Namibia showed how it was possible for an extremely rich mix of cultures and languages to live together. He would have appreciated more information in the report on the various African groups. Some of those groups spoke endangered languages: were any efforts being made to preserve those languages?

10. He noted that the name "San", used in censuses for one of the ethnic groups, was not the group's own name for itself. He hoped that one day the group would be able to self-identify in censuses using its own name. It was clear from the report that the State party had made great efforts to find a just solution to the historical expropriation of land from groups such as the San, and the Special Rapporteur on the rights of indigenous peoples had noted that there had been progress in promoting their rights, but problems remained. He would like to know whether the State party defined the San and the Himba as indigenous peoples, which would reflect their spiritual and physical connection to the land. He noted from the report that two groups that had been recognized had no land, and he would appreciate comments in that regard.

11. The State party was to be commended on the approach it had adopted in drafting its report, which dealt with the replies to the Committee's previous concluding observations separately from the new developments in the State party. However, he was confused by the fact that the State party's core document referred to the latest census, taken in 2011, while the report itself referred only to the 2001 census. He would appreciate an explanation.

12. He asked when the Child Care and Protection Act would enter into force and requested additional information on the ongoing reform of the Education Act. Noting that the school dropout rate among Himba children remained high and that the enrolment rate of 7-year-olds was considerably lower among native speakers of Herero and of the Khoisan languages than among native speakers of English, he said that further efforts were needed to boost literacy rates.

13. He would appreciate information about a white paper on indigenous peoples that had recently been submitted to Parliament by the Ombudsman and about the Government's plans with regard to ratifying the Convention Governing the Specific Aspects of Refugee Problems in Africa. He would welcome an update on the progress of talks between Namibia and Germany concerning possible reparations for descendants of the victims of the Herero and Namaqua Genocide. The delegation should also elaborate on the selection process for members of the Council of Traditional Leaders, bearing in mind that the San people tended not to have leaders or chiefs.

14. **Ms. McDougall**, while commending the State party for the progress that it had made in the face of significant challenges, said that poverty remained a major concern and asked why legislation such as the Communal Land Reform Act and the Affirmative Action (Employment) Act had not proved effective in redistributing wealth and in restructuring the economy, respectively.

15. The delegation should describe the Government's understanding of the concept of communal land and the extent to which the Communal Land Reform Act was compatible

with the culture of the San people. She wished to know whether the San people were considered a part of society and what measures were envisaged to improve their quality of life. She would also appreciate comments on whether the Government had taken sufficient educational, legislative and other measures to combat hate speech and racially motivated physical attacks, particularly against the San people.

16. **Mr. Kemal** asked whether the State party intended to broaden the scope of the Racial Discrimination Prohibition Act in order to bring it fully into line with article 1 of the Convention. He said that he would welcome details of efforts to desegregate schools and asked whether a time frame had been established for doing so. The delegation should also respond to reports that mobile schools set up for the benefit of the Himba community were being closed owing to a lack of resources and elaborate on the steps that were being taken to ensure a more equitable allocation of special funds among marginalized communities.

17. He wished to know what steps the State party was taking to implement some of the recommendations made by the Committee on Economic, Social and Cultural Rights in its concluding observations on the initial report of Namibia (E/C.12/NAM/CO/1). In particular, the delegation should describe what was being done to expand the mandate of the Ombudsman, to introduce a limit to the Ombudsman's term of office, to give the Ombudsman the power to select, recruit and remunerate his or her own staff and to specify the source of the funds used to cover the Ombudsman's expenses. It should indicate when the Government intended to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and to adopt a law recognizing indigenous peoples on the basis of self-identification and protecting their rights, including the right to ownership of the lands that they traditionally occupied. Details of the measures envisaged to ensure that the free, informed consent of indigenous peoples was obtained before the approval of development projects, such as the construction of a dam in the Baynes Mountains, would also be welcomed.

18. Lastly, he wished to know when the Government would implement the recommendations made by the former Special Rapporteur on the rights of indigenous peoples following his visit to Namibia in 2012 and what was done to promote Namibian ownership in the fishing industry.

19. **Ms. Dah** said that she was pleased to see the progress that Namibia had made since independence in working to eliminate racial discrimination, especially given the State's complex history of colonization and its struggle for independence. In spite of the fact that Namibia was a very large country, it had problems with landownership. Similarly, although the country had one of the highest per capita income levels in Africa, over half of the population lived in absolute poverty. Economic development was essential to protecting the most vulnerable sections of society and to eliminating discrimination, in accordance with article 5 of the Convention.

20. Although the Bantu people were not considered indigenous to Namibia, as was mentioned in paragraph 15 of the core document (HRI/CORE/NAM/2014), they were indigenous to the region in general and could therefore also potentially benefit from targeted special measures. In particular, such measures should focus on land, employment and education and should be developed with the active participation of the communities they targeted. Given that certain communities in the region had been artificially separated by colonial borders, perhaps the approach to special measures used in neighbouring countries could be studied, in order to learn from their experience. Namibia had introduced a number of laws to combat discrimination; however, the Committee would appreciate more information on the impact of those laws.

21. **Mr. Murillo Martínez** said that the economic situation in Namibia was of concern, given that more than 60 per cent of the population lived on under 2 Namibia dollars per day.

More information would be welcome on the scope of the special measures put in place, especially in the field of education. The Committee would also like to know more about how vulnerable groups were incorporated into the education system in practice, from the standpoint of interracial relations in particular. Was the State's ethnic diversity reflected accurately in the education system and what was being done to overcome the legacy of apartheid in education? Were more data available on HIV infection rates and on international cooperation in obtaining affordable medication to treat infected persons? Regarding the implementation of an electronic policing and monitoring system, could the delegation provide more information on how it worked?

22. Finally, on the subject of reparations for the genocide committed in Namibia, he asked what progress had been made in the negotiations with the German authorities.

23. **Mr. Yeung Sik Yuen** said that the State party's report (CERD/C/NAM/13-15) had been submitted in October 2014 and the Committee would therefore appreciate an update on the state of progress in implementing legislation such as the Racial Discrimination Prohibition Act, mentioned in paragraph 18, the laws pertaining to marriage and inheritance, mentioned in paragraph 19, and the legislation on hate speech, mentioned in paragraph 30.

24. The Government should be commended on its efforts to improve living conditions in Namibia, but it was regrettable that more than 50 per cent of the population continued to live in poverty despite the strength of earnings generated by the country's abundant natural resource base. Moreover, despite its large size and relatively small population, Namibia faced problems relating to land distribution. The Committee would appreciate more information on the resettlement initiative mentioned in paragraph 58 of the State party's report, given that a large amount of land seemed to be allocated to individual families. Was that the best way to ensure optimal use of the land? Paragraph 61 of the report referred to the practice of issuing a certificate of landownership to members of indigenous communities. Did that practice entail drawing up a lease and under what conditions did resettlement take place?

25. **Ms. Shepherd** said that the Committee would appreciate more detailed data on demographics and ethnic groups, especially on the landownership patterns of the minority white population. More information would also be appreciated on the progress in redistributing land and whether the State was on track to meet the goals it had set in that regard. What efforts were made to ensure that the 70 per cent of Namibians, who were mostly black and who lived on land which constituted only 43 per cent of the territory of the State, were able to make a decent living? In terms of education, were efforts made to ensure that vulnerable groups were able to access education facilities and was the country's racial history accurately reflected in curricula and teaching materials?

26. **Mr. Marugán** said that the Committee would like to know more about the various surveys conducted on economic and social needs in Namibia, to which reference was made in paragraph 77 of the report. The Labour Act of 2007 prohibited discrimination against persons with AIDS or HIV positive persons. Given the high rate of HIV and AIDS infection among the San community and other vulnerable groups, what measures and programmes had been introduced to ensure that the law was implemented in practice? The report (A/HRC/23/36/Add.1) of the Special Rapporteur on extreme poverty and human rights, following her mission to Namibia in 2012, indicated that the unemployment rate had reached 51.2 per cent in 2008; were unemployment data disaggregated by ethnic group available?

27. Given that Namibia suffered from high levels of inequality, were there plans to introduce policies to redistribute wealth? In the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/24/41/Add.1) it was stated that a very low number of San students attended university. Could the delegation provide more data on the numbers of

San persons at all levels of the education system? In the same report it was pointed out that persons living in rural areas often had difficulty in accessing health-care facilities; was more information available on that issue?

28. **Mr. Lindgren Alves** asked what measures the State party was taking to address the discrimination suffered by the isolated indigenous community known as the Himba. He also wished to know whether the State party considered that the San indigenous community encountered prejudice and discrimination more frequently than other non-white groups, as the San seemed to be treated as a special case. He asked which ethnic groups belonged to the population category referred to by the State party as "coloured", whether that term implied that they were of mixed race, and whether they accepted the use of that term.

29. **Mr. Bossuyt** said that it was his understanding that the Namibian Constitution permitted the use of languages other than the country's official language, English, and guaranteed persons who did not speak English the right to communicate in their mother tongue in the administration, justice, education and public service sectors. He asked what the most commonly spoken languages other than English were; whether minority and indigenous groups were also guaranteed that right; whether an interpretation service was available to persons who did not speak English; and whether bilingual education was provided in Namibian schools.

30. The Committee objected to the use of the term "*discrimination positive*" in the French version of the State party's report, as discrimination was a purely negative phenomenon which could never be justified. More accurate terms should be used in the future, such as "*action positive*", which corresponded to the term "affirmative action" used in the original English version of the report, or "*mesures correctrices*", or "*mesures spéciales*".

31. Noting that the reservation entered by Namibia to article 26 of the 1951 Convention relating to the Status of Refugees enabled it to restrict the freedom of movement of refugees and asylum seekers residing in the national territory, he asked why the State party deemed such restriction necessary.

32. Turning to the right to own property, he noted with interest that the State party reserved the right to expropriate fixed property for "public purposes" which might not be in the public interest. He invited the delegation to explain the nature of those "public purposes".

33. **Ms. Hohoueto**, noting that the Namibian Constitution accorded equal recognition to both customary and common law on the condition that neither ran counter to statutory law or to the Constitution itself, asked how the State party ensured that those laws were applied in such a way as to accord equal protection and treatment to all persons; which law was applied by community tribunals; and whether the State party had removed all provisions that discriminated against women and girls belonging to certain ethnic groups from its laws on marriage and inheritance.

34. The jurisprudence of the High Court could not be used as a substitute for the legal prohibition of hate speech in Namibian law in accordance with article 4 of the Convention. It was regrettable that the burden of proof fell upon the complainant in civil cases involving racial discrimination. She invited the State party to consider amending its civil law to shift the burden of proof from the complainant to the alleged perpetrator in such cases, as racial discrimination was often difficult to prove in practice. Lastly, she noted with concern that, while racial discrimination was prohibited in several other laws, it was still not prohibited in the Criminal Code. She urged the State party to remedy that discrepancy without delay.

35. **Ms. Mohamed** said that, as women had equal landownership rights, she would be interested to know why they still faced obstacles in accessing land for cultivation. She also wished to know to what extent collective rights were protected in Namibia and to be informed about the content of the law on domestic workers.

36. **Mr. Avtonomov** asked what measures the State party was taking to prevent the spread of HIV and AIDS, particularly among minority and indigenous groups, and to assist persons already infected with the disease. He wished to know how the State party planned to address the dearth of qualified medical practitioners, as there were only around 600 doctors covering the entire national territory. Noting that the uneven distribution of income in Namibia often prevented certain minority and indigenous groups from having access to health care, he asked what measures the State party envisaged taking to guarantee such access, especially for groups living in remote areas.

37. The vulnerability of the San to discrimination, coupled with the fact that they lived on the fringes of Namibian society, often dissuaded them from asserting their rights and participating in national decision-making processes. He asked how the State party planned to ensure the continued survival of that indigenous community and of its language and traditions in a modernized society and its equitable representation in national decision-making bodies.

38. Noting that the Namibian Constitution recognized customary law and that customary courts were in operation in the national territory, he enquired about the State party's approach to identifying and outlawing outdated and/or discriminatory customs that were incompatible with the international obligations that it had assumed upon ratifying the Convention.

39. Lastly, he wished to know whether the State party intended to ratify the amendment to article 8 of the Convention concerning the financing of the Committee's activities and whether it intended to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals in accordance with article 14 of the Convention.

40. **Ms. Dah** said that it was important for as many States parties as possible to ratify the amendment to article 8, as the goal of achieving universal ratification of the Convention was within reach. She requested additional information on the mandate, powers, authority and membership of councils of chiefs in Namibia. In that connection, she asked whether there were communities in Namibia that functioned without a chief and, if so, how those groups were represented in councils of chiefs. She asked what measures were in place to ensure that marginalized and vulnerable groups were equitably represented in national decision-making bodies.

41. Noting that the State party had adopted a number of special measures to guarantee the San access to education, she asked about the primary, secondary and tertiary enrolment and completion rates for San students; whether the establishments they attended were public or private; whether any of them were subsidized; how those that were private were organized; and whether the San were free to transfer from one establishment to another.

42. Lastly, she wished to know whether the State party had considered devising a strategy to preserve the traditional cultural knowledge of the minority and indigenous groups living in the national territory, in particular that relating to medicine and the environment. The fact that such knowledge was often only passed on orally from generation to generation underscored the need for a collective effort at the continental level to preserve it for posterity. She would also welcome the participation of the Namibian national human rights institution in future interactive dialogues with the Committee.

43. **The Chair** asked whether the State party had attempted to measure the impact of the introduction of the old-age pension scheme on poverty and life expectancy, and how it would ensure that those who were the first to receive pensions were those who needed them most.

The meeting rose at 5.55 p.m.